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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

REPLY BRIEF FOR THE APPELLANT

Ex parte Jukka TUOMI

COMMUNICATION SYSTEM

Serial No. 10/761,584
Appeal No.: Not yet assigned
Group Art Unit: 2441

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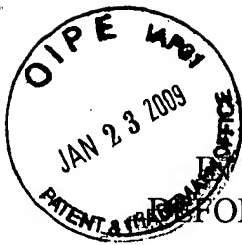
Peter Flanagan
Attorney for Appellants
Reg. No. 58,178

SQUIRE, SANDERS & DEMPSEY LLP
8000 Towers Crescent Drive, 14th Floor
Vienna, Virginia 22182-6212

Atty. Docket: 059643.00364

PCF:dlh

Encl: Reply Brief



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re the Appellant:

Confirmation No.: 4261

Jukka TUOMI

Appeal No.: Not yet assigned

Serial Number: 10/761,584

Group Art Unit: 2441

Filed: January 22, 2004

Examiner: Brian J. GILLIS

For: COMMUNICATION SYSTEM

REPLY BRIEF

January 23, 2009

I. INTRODUCTION

This Reply Brief is filed in response to the Examiner's Answer mailed January 5, 2009. In the Examiner's Answer, while no new grounds of rejection were explicitly made, comments and explanations are provided which are tantamount to new points of argument or which provide a need for further clarifying of the record. This Reply Brief, therefore, is submitted to address these new points of argument, and to clarify why claims 1-3, 5-11, and 13-26 of the pending application should be considered patentable over McCanne (U.S. Patent No. 6,785,704) ("McCanne") (with or without the addition of the further cited references), and therefore, should be found by this Honorable Board of Patent Appeals and Interferences to be allowable.

This Reply Brief addresses a few of the deficiencies of the Examiner's Answer. Appellant's Appeal Brief, however, is maintained, and failure to repeat the arguments

contained therein, or to address one or more arguments set forth in the Examiner's Answer should not be construed as a waiver or an admission. The Appeal Brief speaks for itself, and this Reply Brief merely supplements the Appeal Brief to address certain aspects of the Examiner's Answer.

II. STATEMENT ON THE STANDARD OF REVIEW

It should be noted that the Examiner's Answer does not address the issue of the appropriate standard of review, and leaves this issue somewhat unclear. To clarify, Appellant respectfully submits that 35 U.S.C. 101 places the burden on the U.S.P.T.O. to show why a patent should not be granted on an application, rather than on the applicant to demonstrate patentability. As such, the appropriate standard of review is not whether Appellant has demonstrated error in the rejection, but whether the Examiner has established that the claims fail some test for patentability. Accordingly, rather than present positive arguments in favor of patentability, Appellant has concentrated on demonstrating that the grounds of rejection presented cannot support the rejection.

III. REBUTTAL TO EXAMINER'S RESPONSE

Although the Examiner identified three issues at pages 15-16, issues (B) and (C) simply refer back to issue (A). Thus, if the Examiner's position with respect to what has been identified as issue (A) is incorrect, then the Examiner's position is incorrect throughout, and the rejection must be reversed.

The Examiner identified issue (A) with the following description:

Applicant asserts the prior art of McCanne does not disclose controlling the resolving of domain name information for both server addresses within a domain or accessible via said domain and also server addresses that are not within a domain or accessible via a domain as stated in claims 1, 13, 17, and 18.

The Examiner replied to this issue as follows:

The Examiner respectfully disagrees. McCanne shows APAR-DNS servers control the address resolution for any domain (column 16, lines 34-56) and further shows the APAR-DNS server determines if a client is authorized or not and if authorized the APAR-DNS server responds to the request with a resolution of the domain name. If the client does not appear to be authorized the APAR-DNS server resolves the request to an address that is ignored or outside the domain (column 31, lines 10-23).

Appellant respectfully submits that the Examiner's characterization of the cited art is inaccurate, and that consequently the Examiner's conclusions are not supported by substantial evidence.

The assertion that "McCanne shows APAR-DNS servers control the address resolution for any domain" is not supported by the citation of McCanne, column 16, lines 34-56. For the honorable Board's convenience, the cited portion is shown:

3.1.4. DNS-based Content Peering

The APAR routing system described above can be used to effect one kind of content peering based on specialized DNS servers, which we call herein a "APAR-DNS server". In this model, the APAR-DNS server is configured with one or more APAR anycast addresses and thus appears as a name server on one or more CDNs. In other words, the APAR-DNS server is typically a single piece of physical infrastructure, either owned by the ISP where the device is situated or owned by a third-party that co-locates the equipment in the ISP's network, that supports multiple virtual CDNs that are owned by third party content service providers, or perhaps, by other ISPs.

The CDN backbone then configures the DNS so that some subtree of the DNS namespace is authoritatively managed by the nameserver with an APAR anycast address. In other words, the namespace is managed by the federation of APAR-DNS servers that are configured with that anycast address and function as the authoritative name servers for the DNS subdomains in the subtree. This is accomplished by simply publishing the desired anycast address as a nameserver (NS) DNS resource record for the desired CDN sub-domain (see below).

As can be seen from an examination of the above portion of McCanne, a nameserver in McCanne authoritatively manages "some subtree" and the federation of APAR-DNS servers function as the authoritative name servers for the DNS subdomains "in the subtree." Accordingly, it is inaccurate for the Examiner's Answer to characterize McCanne's disclosure as teaching, "McCanne shows APAR-DNS servers control the address resolution for any domain."

Accordingly, it is respectfully submitted that the position of the Examiner's Answer lacks substantial evidence of record, and the only possible conclusion based on the cited

evidence is that McCanne fails to disclose or suggest “wherein said access controller is configured to control resolving of domain name information for both server addresses within said domain or accessible via said domain, and server addresses that are not within said domain or accessible via said domain,” as recited in claim 1. Although each of the other independent claims (and dependent claims) has its own scope, the Examiner’s Answer provides no different explanation with respect to those other claims. Consequently, no further explanation of error should be required to prove that no *prima facie* rejection of the claims has been made with substantial evidence to support such a rejection.

Additionally, the assertion that “McCanne ... further shows the APAR-DNS server determines if a client is authorized or not and if authorized the APAR-DNS server responds to the request with a resolution of the domain name [and if] the client does not appear to be authorized the APAR-DNS server resolves the request to an address that is ignored or outside the domain,” is not supported by the citation of McCanne, column 31, lines 10-23.

For the honorable Board’s convenience, the cited portion is shown:

Using the above techniques, servers can be easily load balanced. AN APAR-DNS routing scheme can also be used to limit requests from unauthorized clients. For example, the request for domain name resolution might include metadata that validates an authorized client. The APAR-DNS server checks the metadata and if the client appears to be authorized, the APAR-DNS server responds to the request with a resolution of the domain name to an IP address and a port number that, by preagreement between the content server and the APAR-DNS server or otherwise, is a port that the content

server will connect over. If the client does not appear to the APAR-DNS server to be authorized, the APAR-DNS server will return an IP address and port number of a port that the content server ignores.

As can be seen from an examination of the above portion of McCanne, the APAR-DNS server checks the metadata in a request for domain name resolution, and if the client appears to be authorized, the server responds to the request with a resolution of the domain name to an IP address and a port number that is a port that the content server will connect over. However, if the client does not appear to be authorized, the server “will return an IP address and port number of a port that the content server ignores.”

Thus, it is respectfully submitted that the Office Action’s characterization that “If the client does not appear to be authorized the APAR-DNS server resolves the request to an address that is ignored or outside the domain,” is not supported by substantial evidence. Indeed, there is no evidence that the address is ignored – instead a port number is of a port that is ignored. Likewise, and more significantly, there is no evidence that the address is “outside the domain.” The cited passage makes no mention at all of the address being outside the domain, and consequently the position of the Examiner’s Answer is not supported by substantial evidence.

Consequently, it is respectfully submitted that McCanne does not disclose or suggest “in response to a determination that the user equipment is not authorized and/or that there is no specified server address for said domain name within said domain or accessible via said domain resolve the domain name information for said domain name outside said

domain,” as recited in claim 1. Although each of the other independent claims (and dependent claims) has its own scope, the Examiner’s Answer provides no different explanation with respect to those other claims. Consequently, no further explanation of error should be required to prove that no *prima facie* rejection of the claims has been made with substantial evidence to support such a rejection.

The Examiner’s Answer does not dispute the fact that such features as discussed above are not disclosed in the references cited other than McCanne. Accordingly, it is respectfully submitted that no combination of references presently of record discloses or suggests the features discussed above with respect to claim 1, or the correspondingly similar features of the other independent and dependent claims. It is, therefore, respectfully submitted that each of the rejections of each of the pending claims is not a proper *prima facie* rejection, is without substantial evidence or record, and should be reversed.


IV. CONCLUSION

As explained above and in the Appeal Brief, each of claims 1-3, 5-11, and 13-26 recites subject matter which is neither disclosed nor suggested by McCanne or any other cited reference (alone or in any combination with one another). As such, Appellant respectfully submits that the Final Office Action has failed to establish a *prima facie* case for anticipation and/or obviousness of any claim. This final rejection being in error, therefore, it is respectfully requested that this Honorable Board of Patent Appeals and Interferences reverse the Examiner's decision in this case and indicate the allowability of all of pending claims 1-3, 5-11, and 13-26.

In the event that this paper is not being timely filed, Appellant respectfully petitions for an appropriate extension of time. Any fees for such an extension together with any additional fees which may be due with respect to this paper may be charged to Counsel's Deposit Account 50-2222.

Respectfully submitted,

SQUIRE, SANDERS & DEMPSEY LLP



Peter Flanagan
Attorney for Appellant
Registration No. 58,178

Atty. Docket No.: 059643.00364
14th Floor
8000 Towers Crescent Drive
Vienna, Virginia 22182-6212
Tel: (703) 720-7800
Fax (703) 720-7802

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